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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 248

JOHN HOWARD LAWSON, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

No. 249

DALTON TRUMBO, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

MOTION AND BRIEF ON BEHALF OF AMERICAN WRITERS ASSOCIATION, INC. AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT'S POSITION THAT A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, BE DENIED

AMERICAN WRITERS ASSOCIATION, INC.,
Amicus Curiae.

LOUIS WALDMAN,
Of the New York Bar,
Counsel.

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Now comes the American Writers Association, Inc., by its attorney, and respectfully moves for leave to file the attached Brief as *Amicus Curiae* in the above-entitled cause in support of the Respondent's position that a Writ of Certiorari should be denied. As grounds for said motion movant shows:

1. The American Writers Association, Inc. is a membership corporation, organized under the laws of the State of New York, consisting of several hundred writers.

2. Among the purposes of the American Writers Association, Inc. are:

(a) to protect American writers from the Communist totalitarian threat to their freedom and the freedom of American culture generally created by the deep inroads which Communists and Communist front organizations have made in the fields of moving pictures, radio, theatre, and publishing.

(b) to protect and preserve the principles of human freedom and the Bill of Rights from the Communist totalitarian threat created by the world-wide attempts of Communism to subvert all freedom.

3. The interest of the American Writers Association, Inc. in opposing the petition for Certiorari is this:

The petitioners herein are writers, claiming for themselves immunity from investigation by the House Committee on Un-American Activities. The American Writers Association, Inc. believes that writers above all, precisely because they play such a vital role in molding American thought and life, owe a special duty of candor and openness to the community as to whether or not they are Communists.

4. We are informed that the petitioners herein have petitioned this court that Writs of Certiorari issue to the United States Court of Appeals for the District of Columbia Circuit and that the United States of America by the Solici-

tor General is opposing the said petitions. The movant, the American Writers Association, Inc., is desirous to support the position of the Government herein.

5. The Solicitor General, as counsel for the Government, has given his consent to the filing of this Brief. Counsel for the petitioners herein has also given his consent.

6. Special reasons in support of this motion are set out in the accompanying Brief.

Respectfully submitted,

LOUIS WALDMAN,
Counsel for
American Writers Association, Inc.

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POINT I

The threat to our country and to our form of government from adherents of Communism is a proper subject of Congressional inquiry.

We believe that the following five facts have been amply established by the history of the past thirty years, and that

we are justified in asking this Court to take judicial notice of them.

1. Communism is an international movement, and the Communist Party of the United States is a section of that movement.

2. Unlike other international movements, the Communist movement is committed to a program by which it seeks to subvert all existing non-Communist forms of government, even the most advanced democracies, including our own.

3. It seeks to carry out its subversive program by peaceful means where possible, and by force and violence where it deems it to be necessary.

4. In non-Communist countries, Communist Parties have served as fifth-columns for Soviet Russia, and in some countries have already aided and been aided by the Red Army.

5. The Communist movement carries on some of its activities in the open, and many of its activities underground, using concealment as one of its techniques.

So much is common knowledge. The existence of this movement, we hold, constitutes a threat to our country, to our free institutions and to our form of government. But the concrete expressions of that threat, in the United States, its extent and specific form, and the human agencies involved, can be best ascertained by a Congressional inquiry, and Congress not only has the power, but it is its duty to do so.

In the thirty-two years since the Bolsheviks first seized power in Russia, the nature of the Communist movement has become well known throughout the world. Merely by way of example, and to illustrate, we cite two recent manifestations.

The first came when Jacques Duclos, an important figure in world Communism and the head of the Communist Party in France, denounced the policies of the American Communist Party and of Mr. Earl Browder, its General Secretary, its many-times candidate for President of the United States, and its actual head, and this denunciation was followed within a short time by the removal of Mr. Browder, his expulsion from the Communist Party and a complete change in party policies.[1]

The second manifestation came more recently when the leaders of the Communist Parties of Europe one after another publicly declared that a war against Soviet Russia would be by definition an imperialist war and that the Communist Parties of these countries would not support their countries in an imperialist war. Shortly after these statements of policy had been made by the European Communist Parties, the Communist Party in the United States made a similar statement of policy.[2]

We shall refer again to these declarations which amount in effect to notice that Communists will fight against their native countries—and that includes Communists in the United States—in another part of this Brief. Here it is

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[1] N. Y. Times, May 25, 1949, p. 1.
[2] Daily Worker, Mar. 3, 1949; N. Y. Times, May 3, 1949, p. 1.

enough to point out that there could be no clearer proof of the international character of the Communist Party in the United States.

Does the existence of such a group in the United States, present a threat to our form of government? We believe that it does, but the point we wish to emphasize here is that the inquiry, the question by the Congress, is a natural and proper one, whatever the answer may be.

The inquiry launched by Congress, through its Committee, must be evaluated against the entire background of the Communist movement.

This inquiry by the Congress as to subversive Communist activities at home cannot be viewed by this court as an isolated event. It is but one of the ways in which our country, recognizing the threat of Communism, is reacting to it.

The end of World War II brought with it an immediate threat of Communist domination of many countries of Europe, accompanied by a direct challenge to our national vital interest, and a threat to our own security. That threat came not from independent Communist parties in the respective countries, but had as its fountain head and as its prime force the government of Soviet Russia. The threat was considered by our government and our people to be sufficiently serious and sufficiently immediate to lead us to spend billions of dollars through the European Cooperation Administration to meet this threat and to prevent the spread of Communism to the shores of the Atlantic. Meanwhile and prior to the authorizations of these huge expendi-

tures, our government had authorized large expenditures of money in Greece in order to prevent the overthrow of the duly constituted government there through a cold war in which the Communists of Greece were aided by foreign Communist forces. We even sent arms and military personnel to aid the Government of Greece.

Beginning shortly after the end of World War II, up to this date, our country has been engaged in what is popularly known as a "cold war" of which the Berlin crisis was only one aspect. Its effect on our country has been so deeply felt and so greatly feared, that the United States has committed itself to far reaching and unprecedented policies such as the recently ratified Atlantic Pact, a military alliance between the United States and the democratic countries of Western Europe.

It is the facts of our current experience which provide the context in which inquiry is made by a duly constituted committee of Congress into the threat to our form of government by adherents to that form of government and to that power against which we are now defending ourselves in a cold war.

Congress in such a context, has every right to inquire into the nature and degree of the threat to our form of government which is caused by the existence and activities of the Communist Party in our country.

POINT II

The standards set up in the statute creating the Committee are clear and definite.

The Committee on Un-American Activities was duly authorized under the Legislative Re-organization Act of 1946 to conduct investigations of:

> "(i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation" (60 Stat., 812, 828).

The provisions of this statute were incorporated in the rules of the House of Representatives of the Eightieth Congress by House Resolution 5, January 3, 1947.

The claim has been made that this language is so vague as not to constitute the basis for a criminal indictment for contempt of the Congress in refusing to answer pertinent questions by the Committee thus established. We submit that "the diffusion within the United States of subversive . . . propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution," is a clear and precise statement of the objects of the investigation and sets up clear and precise standards of investi-

gation to which the committee must adhere. A great deal of ink has been spilled in attempting to prove that the word, "un-American" is vague as a standard. Such argument, we submit, is beside the point in view of the language we have just quoted. There is nothing unclear or vague about subversive propaganda. There is nothing unclear or vague about the phrase "instigated from foreign countries," nor about "the principle of the form of government as guaranteed by our Constitution." The specific questions put by the Committee to Mr. John Howard Lawson and to Mr. Dalton Trumbo, clearly fall within one or both of these specific standards—and the petitioners have no basis for complaint.

POINT III

The power to investigate the threat to our form of government from Communism, carries with it the power to inquire into the identity and the number of those who adhere to the vehicle through which that threat is expressed and given form.

In the context of our times, in the midst of a cold war, Congress certainly has the power to inquire into the threat of Communism to our form of government. This inquiry logically falls into several subdivisions of which at least two are pertinent here. First, comes the inquiry, does Communism constitute a threat to our form of government? Second, if the answer be in the affirmative, even tentatively, in the minds of the members of the Committee, then the extent of the threat becomes a proper subject of inquiry. Since the threat if it does exist does not exist in a vacuum,

the human agencies of the threat are proper subjects for inquiry.

Let us first consider the first aspect of the inquiry, which is the question: Does Communism constitute a threat to our form of government? In pursuing such an inquiry with legislation as its aim, surely the inquiry should be made not merely from the opponents of Communism, but from its adherents as well. Congress is under a duty as a matter of fair play, at the very least, to elicit from the adherents of Communism their answer to the question whether Communism is a threat to our form of government. It necessarily follows that Congress is under a duty to determine who are the adherents of Communism so that it may pursue this line of inquiry further.

Thus the question: "Are you or have you ever been a member of the Communist Party?" is basic to an inquiry into the existence and extent of a threat to our nation from Communism, and the answer to that question from Communists themselves, is an essential part of the information sought. It is thus relevant to the subject of inquiry and to refuse to answer is to refuse to give to the Congress information which it must have to reach a proper and informed judgment on the matter under investigation.

But the right of the Congress to ask if a person is or ever has been a member of the Communist Party, does not depend upon this first phase of the investigation alone, for the extent of the threat is as much a subject of legitimate questioning as the existence of the threat. Here we refer again to the recent history of Europe and Asia. This court

may take judicial notice of the fact that first one country and then another in Eastern and Central Europe was subverted to Communism not by democratic process, not by the will of a majority, but by the calculated revolutionary overturn of constituted government by a minority.

Shall it be said that we are in no danger because only monarchies—like Greece—are subject to violent guerilla action by minorities? But China, which has fallen in large measure to the Communists, was a republic. Shall it be said that China was not really a democracy, and that accounts for its fall? But the last of the governments of Europe to be overturned by a minority was Czecho-Slovakia, a bastion of democracy in Europe, a model of democracy for many years. Czecho-Slovakia, like the other Central European countries where Communist seizure of power has been successful, is behind an iron curtain, but the whole world knows and this court may take judicial notice of the fact that Czecho-Slovakia, like the other Central European countries, was overturned by a Communist *minority.*

How small the minority was we do not know in figures, but the whole world knows that it was small and that it made up in discipline, in fanaticism and in the backing of a great world power for its lack of numbers.

From the day in 1917 when the democratically constituted government of Russia, represented by the constituent assembly, was overthrown by a handful of Communists, to the day three decades later when the democratically constituted government of Czecho-Slovakia was overthrown by a minority of Communists, a record has been written, of

which this court should take judicial notice, of a definite, effective technique of seizing power by Communist minorities.

In the light of this history, we submit that the Congress has the right to inquire and to seek to determine how many adherents of Communism there are in this country and that the question "Are you or have you ever been a member of the Communist Party?" is a question which is asked in pursuance of that right, and that Congress has the right to ascertain from Communists as well as non-Communists, all that it can of the techniques used by Communists in this country.

POINT IV

The question "Are you or have you ever been a member of the Communist Party?" is not an inquiry merely into beliefs, but an inquiry into activity.

The question, "Are you or have you ever been a member of the Communist Party?" has been attacked as being an invasion of the rights of a witness in that it is an inquiry into the opinion of the witness and the contention has been advanced that such an inquiry into opinion is a violation of the First Amendment to the Constitution.

We submit that such a contention completely misapprehends the nature of the question "Are you or have you ever been a member of the Communist Party?" Unquestionably membership in the Communist Party carries with it a belief in Communism, but that is not all. The Communist Party in the United States is not a mere propa-

ganda organization, nor for that matter is it a mere political party.

This much is definitely known and the Court may take judicial notice, that the Communist Party has a broad and variegated program of domestic activities involving trade unions, the military establishment, schools and universities, government, and fraternal, religious and cultural organizations. This alone shows conclusively that membership in the Communist Party means more than the mere espousal of certain views, it involves activity along communist lines.

Furthermore, many informed people believe that the Communist Party carries on organizational activities within trade unions which give it a grip on vital sectors of our economic life; that it carries on espionage; that it encourages the formation of Communist-front bodies in educational institutions; that it seeks to penetrate such organizations, for example, as the Screen Writers Guild, for the purpose of furthering its ends. Moreover, as we have already shown, it takes a position in advance with respect to the participation of its adherents on a possible future conflict between the United States and Soviet Russia.

That such acts may be accompanied by speech or by writing, which, standing by themselves, may enjoy certain immunities, does not mean that the acts joined with speech enjoy the same immunities.

As this court has said in *Gibboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 502 (1949):

> "But it has never been deemed an abridgement of freedom of speech or press to make a course of

> conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. See *e.g., Fox* v. *Washington,* 236 U. S. 273, 277; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568."

The Congress has the right, therefore, to determine who is committed to the Communist program, and the acts involved in it, whether or not they are mingled with speech.

Moreover, we respectfully submit that, even if we assume (we do not concede), that the question asked of the petitioners is an inquiry into opinion, if it be held that such an inquiry comes within the ambit of the protection accorded to free speech by the First Amendment, then it likewise comes within the limitations on free speech which have been delineated by our courts. Just as the right to free speech is not absolute, so the right, if any there be, to silence as to one's opinion, by the same token cannot be absolute. As the court stated in *National Maritime Union of America, et al.* v. *Herzog, et al.,* 78 F. Supp. 146, 165 (1948), affirmed, 334 U. S. 854, 68 Sup. Ct. 1529, 92 L. Ed. 1776 (1948):

> "It is fully established by reiterated holdings of the Supreme Court that the right of free speech is not absolute but must yield to national interests justifiably thought to be of large importance. The same is true of the right to remain silent. When legislating to avert what it believes to be a threat of substantive evil to national welfare, Congress may abridge either freedom. The right to be silent may be interfered with in either of two ways: As an incident to the accomplishment of a legislative purpose, Congress may require an individual to make

> a statement specifically prescribed by it; or it may require generally that an individual make any statement essential to avert the anticipated evil, without defining the statement."

Nor does the clear and present danger doctrine enunciated by the Supreme Court in *Schenck* v. *United States,* 249 U. S. 47 (1918), constitute a limitation on the committee here, for the clear and present danger doctrine applies only to cases where a statute has actually imposed a restriction on speech or publication. *Barsky, et al.* v. *United States,* 167 F. 2d 241 (App. D. C. 1948); certiorari denied, 334 U. S. 843 (1948), petition for rehearing currently pending.

But because the clear and present danger doctrine is applicable to legislation enacted involving speech, here, where Congress' inquiry is conducted to determine whether legislation which may affect speech, is needed, the clear and present danger doctrine becomes a compelling reason for sustaining the right of the Committee to inquire as to whether one is or has been a member of the Communist Party.

Should the Committee decide to recommend legislation involving speech, the Congress will need to know whether a clear and present danger, in fact, exists.

It would seem obvious, therefore, that the Congress in its inquiry into subversive activity, would be under a duty to secure information during its investigations concerning both the clearness and the immediacy of the danger to be apprehended. In the pursuit of such an inquiry, the question "are you or have you ever been a member of the

Communist Party?'' is justified in itself, and is an essential preliminary to eliciting from a witness information bearing on the question of whether the subversive activities being investigated constitute a clear and present danger.

POINT V

Since the question under investigation is a proper subject of inquiry by Congress and since the Committee is validly constituted and the statute creating it contains clear and proper standards, any abuse of its powers by the Committee, so long as such abuse does not result in an invasion of a witness' rights, is a matter for correction by Congress and the People and not by the Courts.

The right of Congress to investigate is so well established that we have cited no authority therefor in this Brief. The investigation by the House Committee on un-American Activities in this case has been carried on by a Committee of Congress which was validly constituted, under clear and proper standards, and the question put to the petitioners herein was lawfully asked, and was relevant and material. One other contention, however, has been consistently pressed in the courts below in this and related cases such as the *Barsky* case, *supra,* and in *United States* v. *Josephson,* 165 F. 2d 82 (C. C. A., 2, 1948); certiorari denied, 333 U. S. 838 (1948), and undoubtedly will be advanced here, and that is the contention that the Committee has openly avowed, through statements by various of its members, that one of the objects of the investigation is *exposure* of Communist and Communist Front personnel and activi-

ties. It is argued that exposure is not one of the duties the Committee is charged with by the statute creating it on the one hand, and it is further argued on the other hand, that if the statute did impose upon the Committee the duty of exposure, it would be unconstitutional. The argument is carried even further and the claim is made that in fact Congress has not, throughout the years of the Committee's existence, passed any legislation as a result of the Committee's investigations.

Let us first dispose of this last argument. The short answer is to be found in the language of the court in the *Barsky* case, *supra,* on page 245, where the Court says:

> "The fact is that at least eight legislative proposals have been submitted to the Congress by this Committee as a result of its investigations."

But in our view, the Committee has a right and a duty to inform public opinion as well as Congress by exposure. "Exposure" is not another word for informing the Congress and the public of the existence of a fact—in this case the fact of subversion. If Congress has the right to have this information, so has the public. The legislative process does not begin or end with the report of a Congressional Committee to the Congress. Legislation generally, and controversial legislation especially, requires an informed public opinion as well as an informed Congress. Indeed an informed public opinion is at the very basis of the legislative process at its best. Therefore, we believe that the Committee as an incident to its powers and functions does have the right to inform the public of the facts that it learns in the course of its inquiry.

But even if it be deemed that this Committee does not have the power of exposure, and that the Committee has spent an undue proportion of its time in exposure rather than in investigation for the purpose of gathering facts on which to base legislation, this would not constitute a basis for denying to the Committee the right to put to the appellants the questions which are at issue here.

For the ultimate test is the statute creating the Committee.

So long as the questions put by the Committee were justified by its investigative and legislative functions—and they were—any abuse of the Committee's powers elsewhere (a charge we do not concede) would not affect the power of the Committee to put the questions at issue here. By the same token, any abuse of its powers by the Committee, so long as it does not trench on the rights of the petitioners, cannot be asserted by them as a basis for contending that the Committee's questions were illegal. And in any event, as we read the petitioner's contentions, the alleged abuses by the Committee are not properly before this Court, and such abuses, if they did exist, are not subject to correction by the Courts, but by Congress itself. The Committee is an arm of one of the three departments of the government whose powers are co-equal with those of the executive and the judiciary and may be invaded by neither. If there be abuses, and if Congress should fail to correct them, the remedy lies not with the Courts, but with the people and its power to change the composition of the Congress.

CONCLUSION

For all of these reasons we respectfully submit that the petitioners' petition for writs of certiorari should be denied.

Respectfully submitted,

AMERICAN WRITERS ASSOCIATION, INC.,
Amicus Curiae.

LOUIS WALDMAN,
Counsel.

CERTIFICATION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

Before me, the undersigned authority for said County in said State, personally appeared MARY HOFFERT who, being by me first duly sworn stated on oath that on this 12th day of September, 1949, she deposited in the United States mail copies of the foregoing Motion and Brief correctly addressed to Philip B. Perlman, Solicitor General, Department of Justice, Washington 25, D. C., counsel for the Respondent, and to Robert W. Kenny, Esq., 629 South Hill, Los Angeles, California, attorney for the Petitioners.

MARY HOFFERT
Mary Hoffert

Sworn to and subscribed before me
this 12th day of September, 1949.
Martin Markson
MARTIN MARKSON
Notary Public, State of New York
Qualified in Queens County
Queens County Clk's No. 4575
New York County Clk's No. 1544
Commission Expires March 30, 1950